VIRGINIA:

the 29 day of august 100 3. White M. MARTICKERK 4:00 m.

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

COMMONWEALTH OF VIRGINIA,

v.

CASE NOS: CR03-3089, CR03-3090, CR03-3091 Hon. Jane Marum Roush

LEE BOYD MALVO,

Defendant

NOTICE

To: Robert F. Horan, Jr., Esquire
Commonwealth's Attorney
Raymond F. Morrogh, Esquire
Deputy Commonwealth's Attorney
4110 Chain Bridge Road
Room 123
Fairfax, VA 22030

PLEASE TAKE NOTICE that I shall appear, by counsel, on September 17, 2003 at 10:00 A.M. before the Hon. Jane Marum Roush, Judge of the Fairfax Circuit Court, to urge my Motion to Order Sound Enhancement of Untranscribed Portion of Audiotape of the Interrogation of the Defendant.

Respectfully submitted,

LEE BOYD MALVO

By		-		
•	· ·	Co-Counsel		
	and			,
Ву			- <u>- U</u>	
-		Co-Counsel	7	

Michael S. Arif, Esquire Martin, Arif, Petrovich & Walsh 8001 Braddock Road Suite 105 Springfield, VA 22151 703-323-1200 703-978-1040 (Fax) VSB No: 20999

Craig S. Cooley, Esquire 3000 Idlewood Avenue P. O. Box 7268 Richmond, VA 23221 804-358-2328 804-358-3947(Fax) VSB No: 16593

CERTIFICATE OF SERVICE

We/I hereby certify that a true copy of the foregoing Motion/Memorandum was mailed,

first class mail to:

Robert F. Horan, Jr., Esquire Commonwealth's Attorney 4110 Chain Bridge Road Room 123 Fairfax, VA 22030

and the original was forwarded for filing to:

Hon. John T. Frey Clerk Fairfax County Circuit Court Fairfax County Judicial Center 4110 Chain Bridge Road Fairfax, VA 22030-4009

and a true copy was forwarded to the

Hon. Jane Marum Roush Judge Fairfax County Circuit Court Fairfax County Judicial Center 4110 Chain Bridge Road Fairfax, VA 22030-4009

this Jam day of August, 2003.

		,
	Co-Counsel	
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	Co-Counsel	i -

VIRGINIA:

the 29 Filed in the Clerk's Office
the day of MUGUET 2003
TESTE: LILLIE M. HART, ELERK 4:00 p.m

By 4 24 D.C.

IN THE CIRCUIT COURT OF THE CITY OF CHESAPEAKE

COMMONWEALTH OF VIRGINIA,

V.

CASE NOS: CF03-3089, CR03-3090, CR03-3091

Hon. Jane Marum Roush

LEE BOYD MALVO,

Defendant

MOTION TO ORDER SOUND ENHANCEMENT OF UNTRANSCRIBED PORTION OF AUDIOTAPE OF THE INTERROGATION OF THE DEFENDANT

COMES NOW the defendant, Lee Malvo, by his co-counsels, and states as follows:

- 1. The defense was previously supplied by the Commonwealth with five audiotapes of the interrogations of Lee Malvo by law enforcement officers on November 7, 2002. Transcripts of those tapes were also provided.
- 2. It was suggested that these tapes were copies of originals made of the conclusion of the interrogations. [The first hours were purportedly not taped, though the room was equipped to allow the surreptitious taping of the interrogation.]
- 3. It was understood that once taping began, the tapes and transcripts contained all remaining interrogations.
- 4. Because of faint sounds at the conclusion of the fifty tape provided by the Commonwealth, that tape was delivered to an audio sound company, In Your Ear, in Richmond, Virginia to attempt to enhance the portion of the tape which was untranscribed.
- 5. That enhancement was done, but because of the poor quality of the copy provided, full sentences and phrases can not be made out clearly.

6. It is clear, however, that the interrogation was continuing though the recording volume was cut way down for some reason.

7. Greater enhancement is necessary to be able to hear the ongoing interrogation. That degree of enhancement will require 1) the original tape and 2) extraordinarily sophisticated equipment that is available in only a few private or governmental labs. The expense of a private lab would be exceptional.

8. It is believed that the FBI and/or other agencies affiliated with the Task Force working for the Commonwealth have such equipment at their disposal.

WHEREFORE the defendant, Lee Malvo, by counsel, respectfully moves this honorable Court to enter an Order directing the Commonwealth to submit the original audio tape number 5 for enhancement and transcription to either a State or Federal agency with suitable equipment or to a private facility capable of providing that service.

Respectfully submitted,

LEE BOYD MALVO

By______ Co-Counsel

and

By_____Co-Counsel

Michael S. Arif, Esquire Martin, Arif, Petrovich & Walsh 8001 Braddock Road Suite 105 Springfield, VA 22151 703-323-1200 703-978-1040 (Fax) VSB No: 20999 Craig S. Cooley, Esquire 3000 Idlewood Avenue P. O. Box 7268 Richmond, VA 23221 804-358-2328 804-358-3947(Fax) VSB No: 16593

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Hon. Jane Marum Roush Judge Fairfax County Circuit Court Fairfax County Judicial Center 4110 Chain Bridge Road Fairfax, VA 22030-4009

this 28th day of August, 2003.

Co-Counsel	
Ch Counsel	